

RAIL SERVICE COMPETITION COUNCIL MEETING MINUTES

**Thursday
October 11, 2007
11:00am – 3:00pm**

**Commission Room
Helena, MT**

COUNCIL MEMBERS PRESENT: Mike O'Hara (Chair), Carla Allen, Evan Barrett, Dan Bucks, Jim Lynch, Larry Bonderud, Bill Fogerty, Sen. Ken Hansen, Mike Scanlan.

COUNCIL MEMBERS ABSENT: Russ Hobbs, Doug Miller, Rep. Mike Milburn, Ron de Yong

REPRESENTING COUNCIL MEMBERS: Ron Zellar (MT Dept. of Ag)

AGENCY REPRESENTATIVES AND GUESTS: Dick Turner (MDT), Zia Kazimi (MDT), Gary Schlaeger (Tamarack Group), Patty Schlaeger (TDA), Mike Opar (TPS), Larry Finch (DOR) Steve Sheldon (WATCO), Barry Stang (MMCA), Michelle Radosevich (BNSF), Jim Currie (MDT)

RSCC ASSISTANCE: Terry Whiteside, Gloria O'Rourke

1.0 Meeting Called to Order; Introductions

Chairman Mike O'Hara called the meeting to order and requested introductions of council members and those in the audience. New RSCC member, Mike Scanlon (PPL), will represent the coal industry for the council. Rep. Mike Milburn has taken the place of Rep. Tom McGillvray.

2.0 Approval of Minutes

Chairman O'Hara requested the minutes from the May 17th meeting be approved. Dan Bucks moved the minutes be approved and Bill Fogarty seconded the motion. All voted in favor to approve the minutes as presented.

3.0 Review of RSCC Status

Chairman O'Hara provided an update on the status of the RSCC. As funding was not available until October 1st, the RSCC could not hold a meeting until today. The RSCC was transferred from the Governor's Office of Economic Development to Montana Department of Transportation. Director Lynch said that when the meetings are held in the Commission Room, video conferencing would be available at 15 locations across the state for anyone that cannot travel to Helena.

Regarding the RSCC budget, Evan Barrett explained that remaining funds from last year were used for the research being conducted by MSU-Billings. The legislature has provided \$50,000 for the RSCC per year for the next two years. Montana Department of Transportation has proposed the following budget:

- October 2007 meetings and contracted support: \$680
- Meeting costs (travel, meals, refreshments, etc): \$1,200 x 4 = \$4,800
- Long term contracted support: \$10,000 - \$15,000
- Non-Federal-aid eligible MDT expenses: \$20,000
- Additional contracted services: \$10,000

Director Lynch noted that federal dollars cannot be used to support the work of the RSCC.

4.0 Results of Plentywood to Scobey MDT/DOA shipper survey

Dick Turner provided a report to the RSCC on the results of the Plentywood to Scobey shipper survey. Questions were specific to a segment of line between Plentywood and Scobey, owned by BNSF. The survey concluded that:

- Low survey response rate makes it difficult to draw conclusions.
- Most respondents would like to see service returned.
- Average 60 mile haul distance is consistent with outside limits of shuttle facility service area based on UGPTI research.
- Shuttle facilities major factor but Whitetail still offers significant option.
- New shuttle facility at Westby should offer additional option for area shippers (70 miles from Scobey)
- Track upgrades would be necessary to ensure reliable service using larger cars

Discussion Points:

- The branch line study found evidence that CHS was offering incentives to bypass Scobey.
- This is an important corner for Montana and for the RSCC to understand. There is not only rail competition but also elevator competition.
- MDT is concerned that big truck traffic will increase on MT 5 which is an old stretch of highway and in very bad shape.
- Steve Sheldon said that as a shortline, WATCO does not participate in the freight rate. Two years ago, WATCO's direction was and still is to do due diligence and discover long term viability of the line between Plentywood and Scobey.

5.0 Technical Assistance Update –(Terry Whiteside)

Terry Whiteside provided the RSCC with an update on the Captive Rail Customer Front:

1. **Rail Shipper Day** – planning underway for 2008
2. **S.953 Rail Competition and Service Improvement Act** introduced March 21, 2007 – 12 co-sponsors including Senator Max Baucus and Senator John Tester – hearing October 23rd
3. **HR 2125 Rail Competition and Service Improvement Act** introduced May 3, 2007 – 50 co-sponsors including Rep. Dennis Rehberg
4. **Massive coalition gets bigger** including Agriculture, ARC, CURE, American Chemistry Council, Edison Electric Institute, National Rural Electric Coop, United Transportation Union, National Association of Wheat Growers, National Barley Growers Association, Sugar, Soybeans, National Farmers Union, Dry Beans, Peas and Lentils, Potatoes, etc.
5. **Railroads are continuing to push tax infrastructure bill** in the new Congress
6. Sponsorship of federal Captive Rail Customer legislation reaches record levels again
7. **STB issues small rate case rules - Ex Parte 646-** shippers not happy –Governor Schweitzer, Montana Wheat & Barley Committee, and MGGA continue to participate
8. **STB opens Ex Parte No. 664 – Cost of Capital determinations** – Governor Schweitzer and 16 Grain interests participate in calls for new standards
9. **Captive rail shippers push through 7 amendments in 7 different committees** to further the cause for increasing rail competition and infrastructure issues

10. **RR's overcharged rail customers by \$6.4 Billion** through the collections of now unlawful fuel surcharges – study by ACC
11. **Senate Judiciary Committee passed the Railroad Antitrust Enforcement Act of 2007 (S. 772)** repealing the exemptions of antitrust on railroads – hearing on October 10th
12. **House T&I Committee holds hearing on Rail Competition** on October 9th – lasting 8 hours
13. **RR's accused of 'SPIN' by National Council of State Legislatures**

Terry also provided information on the status of rail captive shipper legislative support, the alliance for rail competition and agriculture working together for passage of HR 2125, the investment tax credit legislation and preparations for a 2007 rail grain transportation survey.

Terry concluded his report with the information that the STB has given final alignment approval on the Tongue River Railroad/Otter Creek. There are several issues and unknowns regarding the building of this line and its impact on Montana's future.

6.0 Working Group Updates

6.1 Forest/Paper/Industrial (Russ Hobbs, Chair)

Terry Whiteside reported on activities of the Forest/Paper/Industrial RSCC Subcommittee. Chair Russ Hobbs and Terry compiled a survey and sent it to industrial, lumber and timber shippers. The purpose of the survey was to identify problems with rail competition in this arena. Terry noted there is no consolidated data of rail shippers in the state which made the survey process a challenge. To obtain more survey data, outreach calls will be made.

6.2 Ports/Intermodal (Bill Fogarty, Chair)

Chairman Bill Fogarty reported on highlights from two meetings held by the Ports/Intermodal Subcommittee:

- o Received an update from Dick Turner on the intermodal study with MDT
- o Requested Terry Whiteside compile a letter on behalf of the RSCC to Montana's congressional delegation regarding concerns of the rail tax infrastructure bill.
- o Invited Wayne Budt of the PSC to explain the PSC's current authority as it relates to rail
- o Next meeting will coincide with Libby Ogard's report and/or the next RSCC meeting

6.3 Agriculture (Carla Allen, Chair)

Agriculture Subcommittee Chair Carla Allen reported on several meetings of this working group. The subcommittee is in the process of conducting a survey within the subcommittee itself to identify problems and issues with rail within the ag arena. Once the problems have been identified, the subcommittee will rank the issues and begin crafting solutions.

6.4 Coal (Evan Barrett, Chair)

Evan Barrett reported the Coal Subcommittee has not yet met but will in the near future.

A focus of this subcommittee will be to work with the Federal Regulatory Energy Commission to share data. Once the data is shared and aggregated, conclusions can be drawn that will be based on fact. Once formal data is available, problems and issues can be presented as fact and addressed.

Mike Scanlan noted entities are bypassing the STB and taking issues to Federal court instead. Small shippers cannot afford the new small rate case rules so will not have a voice. The STB must address this problem in the future.

Chairman Mike O'Hara encouraged the subcommittees to continue to work as the RSCC needs to identify specific problems and identify solutions to present to the legislature.

7.0 Rail Updates

7.1 Union Pacific (Evan Barrett)

Evan Barrett provided an update on UP. Patriot Rail, who purchased Rarus Rail, is taking an aggressive stance in the Silver Bow area, Anaconda and Dillon as far as perspective business development. There may be increased demands on the use of UP if Patriot business development ideas pan out.

7.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud said the big news with CP is that they acquired DME Railroad. Larry said this transaction should improve competition with BNSF in particular areas.

7.3 Central Montana Railroad (Carla Allen)

Carla Allen reported CMR is winding up maintenance for the winter and preparing for a busy grain hauling season next month. CMR also has several business opportunities it is investigating. Carla said CMR had a very successful dinner train business this summer with new volunteers that rejuvenated the project.

7.4 Watco, Yellowstone, Mission Valley, others

Steve Sheldon had no further comments.

8.0 Next Council Meeting

The next meeting of the RSCC will take place on Wednesday, January 9th from 11:00am to 3:00pm, at this same location. Subcommittees will meet between now and January 9th. Director Lynch will let the RSCC know when Libby Ogard will make her presentation and if it would be in conjunction with the RSCC meeting.

9.0 Council Member and Public Comment Period

With no further comments from the council or the public, Evan Barrett moved for the meeting to be adjourned. Carla Allen seconded the motion; all voted in favor to adjourn.